BOARD OF AGRICULTURE, TRADE AND CONSUMER PROTECTION MINUTES

February 19, 2014

The Board of Agriculture, Trade and Consumer Protection met on February 19, 2014, at the Department of Agriculture, Trade and Consumer Protection, 2811 Agriculture Drive, Board Room, Madison, WI. The meeting was preceded by public notice as required by s. 19.84, Stats.

Call to Order

Board Chair Andy Diercks called the meeting to order at 9:03 a.m.

Members Present

Andy Diercks, Mark Schleitwiler, John Koepke, Dennis Badtke, Dean Strauss, Nicole Hansen, Doug Wolf, Miranda Leis and Michael Dummer were present.

Minutes

Motion

John Kopeks made a motion, seconded by Nicole Hansen, to approve the December 10, 2013 Board minutes. Motion approved unanimously.

Election of Officers

The Board conducted its annual election of officers.

Board Chair

Mike Dummer nominated Andy Diercks for Board Chair. The nomination was seconded by Miranda Leis. There were no additional nominations. Motion approved unanimously.

Vice-Chair

Miranda Leis nominated John Koepke for Board Vice-Chair. The nomination was seconded by Mike Dummer. There were no additional nominations. Motion approved unanimously.

Secretary

Mike Dummer nominated Miranda Leis for Board Secretary. The nomination was seconded by Dean Strauss. There were no additional nominations. Motion approved unanimously.

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Welcome and Introductions

Board Chair Andy Diercks welcomed the new board member Douglas Wolf to the board. Doug Wolf is a hog farmer from Grant County and replaces Dick Cates on the board, who resigned from his position in December of 2013.

Public Appearances

Lynn and Nancy Utesch of Kewaunee County appeared before the board separately to voice their concerns with the current Livestock Siting Law. While many of the farms within their county are enrolled in Nutrient Management Plans, the ground water and surface water in the area is continues to be contaminated. They fear this is due to neighboring CAFO's (Confined Animal Feeding Operations) and the lack of a cap on the maximum animal units per manure storage tank. They suggested that towns and counties need bonding to be able to protect themselves in the event a CAFO goes bankrupt and better engineering standards need to be enforced to protect the environment and the water supply.

Shahla Werner, Director of the Sierra Club- John Muir Chapter, urged the board to consider changes to the Livestock Siting Rule. She recommended conducting an extensive review of the siting rule and incorporating suggestions made from the 2010 expert panel while incorporating the latest scientific research on public health, farming practices and technologies. Public hearings throughout the state would also allow critical citizen feedback from those most affected by CAFO's.

Edie Ehlert of Crawford County is a board member of the Crawford Stewardship Project and asked the board to consider nine possible changes to the Livestock Siting Rule, some of which included: increasing the application fees for CAFO's, adding reimbursements to local communities or bonding, allowing more control by local government, adding air emissions standards, and adding greater distance requirements between CAFO's and vulnerable community resources such as schools, hospitals, lakes, creeks and historic sites.

Kara O'Connor of the Wisconsin Farmers Union came before the board to voice their support of the proposed ATCP 55 hearing draft. She requested that there be a priority on reporting back any possible violations of antibiotic use and residues in a timely manner to the farmer. The Wisconsin Farmers Union also commented that the current Livestock Siting regulations are not adequate. She asked the board to consider the report completed in 2010 by the technical committee. The Union felt this report was well done and was widely supported.

Pete Hardin of Green County, producer of *The Milkweed* newspaper, spoke to the board about his concerns relating to Foot-and-Mouth Disease threats posed by the import of meat and dairy products from nations infected with Foot-and-Mouth Disease. Pete asked the board to contact the USDA and ask for a halt to imports of meat and dairy products from all nations lacking "Foot-and-Mouth Disease Free" status, to ask for better security through the National Association of State Departments of Agriculture, and to appoint a special task force to explore Foot-and-Mouth Disease issues.

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Brad Legreid, Executive Director of the Wisconsin Dairy Products Association, requested that the board approve the final draft of ATCP 82 relating to Milk Haulers. As the federal PMO (Pasteurized Milk Ordinance) changes every two years, the department's rules need to be updated to reflect those changes. The Association also urged the board to approve the hearing draft of ATCP 161.62 relating to the Dairy Processor Grant Program. Grant programs like this and other tax incentives for producers, processers and livestock owners are invaluable to the dairy industry.

ATCP 104, Leaf Tobacco Buying and Selling (Scope Statement)

Jeremy McPherson, Director of the Grain Inspection Services section in the Division of Trade & Consumer Protection, presented the scope statement for ATCP 104.

Ch. ATCP 104 prohibits leaf tobacco buyers from engaging in certain practices:

- Attempting to induce another tobacco buyer to engage in specific activities that would artificially manipulate the market price for tobacco.
- Refusing to negotiate with any grower for the purchase of tobacco because such tobacco was previously graded or submitted for grade.
- Falsely representing in negotiations with a grower that any particular lot or crop of tobacco was purchased at less than the price actually paid, or that another tobacco buyer has or will cease buying tobacco.
- Purchasing tobacco under any contract which does not include a specific time within which delivery and payment are to be made.
- Giving or offering to give any grower any secret or separately stated bonus, commission, payment or other consideration.

At the time this rule was created, the tobacco industry in Wisconsin was more prevalent and the crop was typically sold in cash markets. This rule was necessary to ensure fair transactions between growers and buyers. Today, the crop is produced and sold under contract. As ch. ATCP 104 is no longer relevant to the current industry, the Department requested that it be repealed.

Motion

Miranda Leis moved, seconded by Dennis Badtke, to approve the scope statement for ATCP 104. Motion approved unanimously.

ATCP 134 Residential Rental Practices (Scope Statement)

Michelle Reinen, Director of the Bureau of Consumer Protection, presented the scope statement for ATCP 134.

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Chapter ATCP 134 prescribes requirements for earnest money, security deposits, and lease provisions. It also prohibits various practices and rental agreement provisions, limits the landlord's ability to enter the premises without notice, and requires landlords to make certain disclosures (for example, uncorrected building code violations of which the landlord is aware). Chapter ATCP 134 regulates residential rental transactions and does not regulate commercial or agricultural rental practices.

Because of recent changes to ch. 704, Stats. (Landlord and Tenant) by 2011 Act 143 and 2013 Act 76, there are now some provisions of ch. ATCP 134 that are inconsistent with ch. 704, Stats. This proposed rule would modify ATCP 134 to conform with the new statute requirements.

Motion

Nicole Hansen moved, seconded by Dean Strauss, to approve the scope statement for ATCP 134. Motion approved unanimously.

ATCP 136 (Final Draft) Mobile Air Conditioners; Reclaiming or Recycling Refrigerant

Judy Cardin, Director for the Bureau of Weights and Measures for the Division of Trade & Consumer Protection, presented the final draft of ATCP 136, relating to Mobile Air Conditioners; Reclaiming or Recycling Refrigerant.

This rule contains environmental protections related to allowable refrigerants and the handling, disposal, registration and training requirements for business operators and technicians. The proposed rule will eliminate the \$120 annual registration fee for operators of mobile air conditioning businesses, harmonize training requirements with EPA to eliminate duplication, and remove outdated references to statutes that no longer exist.

DATCP held a public hearing on January 21, 2014 in Madison with the hearing record open through January 24, 2014. No persons attended the public hearing or submitted comments on the proposed final draft rule. The department did make minor formatting changes required by the Legislative Clearinghouse in its report to the agency.

Motion

Dennis Badtke made a motion, which was seconded by Nicole Hansen, to approve the final draft rule of ATCP 136. Motion approved unanimously.

Consumer Protection Bureau Report

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Sandy Chalmers, Division Administrator, and Michelle Reinen, Director of the Bureau of Consumer Protection in the Division of Trade & Consumer Protection, provided an update on the Consumer Protection Bureau. They discussed several recent judgments against companies violating the home improvement contractor law. Other recent enforcement actions included: consumer fraud, fraudulent member charges, and cases that were referred to the Department of Justice.

Ms. Chalmers also reviewed several of the previous year's Top Ten Consumer Complaints. The top five complaints were telemarketing, landlord-tenant issues, telecommunications, identify theft, and home improvement complaints. Telecommunications and identity theft complaints grew the most within the last year with telemarketers targeting the elderly and identify thieves stealing tax ID's.

Geographic Information System (GIS) Report

Lisa Morrison, Agency GIS Coordinator, and Steve Graham from the Division of Management Services presented a PowerPoint to the board outlining the current status of the geographic information system (GIS) and other geospatial activities that support the business needs of department programs, partners, customers and the public.

The use of geospatial tools for data collection, mapping, spatial analysis, and web mapping continues to grow within the Department. Ms. Morrison demonstrated the mobile mapping application which is the new and growing area within the department. The Department coordinates with other federal, state and local entities to address common legislative issues, enterprise services, data sharing and emergency response activities.

ATCP 55 Meat and Meat Food Products (Hearing Draft)

Steve Ingham, Division Administrator, and Cindy Klug, Meat Safety and Inspection Bureau Director, from the Division of Food Safety presented the hearing draft rule of ATCP 55 relating to Meat and Meat Food Products.

The proposed rule specifies corrective actions that must be required by state-licensed meat establishments from certain livestock producers before the establishment operator accepts animals from the producer for slaughter. The required corrective actions apply to livestock producers who, on two or more occasions during a calendar year, submit animals testing positive for any illegal drug residue to be slaughtered at a state- or federally inspected meat establishment.

Currently, ATCP 55 addresses the production of meat and meat food products starting with the submission of an animal for slaughter for human consumption and, by reference, adopts United States Department of Agriculture regulations prohibiting the slaughter of "downer" cattle (non-ambulatory) for human food or feed destined for bovine animals.

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Current rules prohibit slaughter of a food animal for human consumption or submission of a food animal for slaughter if the person knows or has reason to know the animal is diseased or injured. The proposed rule will further prohibit someone from slaughtering or submitting for slaughter a food animal for human consumption if that person knows that the animal is adulterated. The rule then defines animals from producers included on the USDA Residue Repeat Violator List for use by Livestock Markets and Establishments as adulterated unless the producer provides written evidence that they have completed a course on proper administration of animal medications. The department will approve a course or courses which are acceptable. Completion of the approved course(s) will require the involvement of the livestock producer's veterinarian.

The proposed rule also revises ATCP 55.07, which requires persons who knows or has reason to know that he or she is submitting a diseased or injured animal for slaughter to sign and deliver a written statement to the person who will perform the slaughter. The proposed rule will revise the requirement that the written statement include a list of all drugs administered to the animal as treatments or feed within 30 days prior to the slaughter submission date. The rule will instead require that the statement certify that the withdrawal time following administration of all drugs as treatments or feed additives complies with the manufacturer's recommendations. This revision acknowledges that some drugs may require a longer withdrawal time than 30 days.

Motion

John Koepke made a motion, seconded by Mike Dummer, to approve the hearing draft rule of ATCP 55. Motion approved unanimously.

ATCP 82 Milk Haulers (Final Draft)

Steve Ingham, Division Administrator, and Peter Haase, Food Safety and Inspection Bureau Director for the Division of Food Safety, presented the final draft for ATCP 82 relating to Milk Haulers.

The proposed rule further aligns Wisconsin's regulations with the Food and Drug Administration's (FDA's) Pasteurized Milk Ordinance (PMO). Consistent with the PMO, the proposed rule allows partial collection of milk from bulk milk tanks, clarifies and strengthens Grade "A" permit reciprocity and establishes a certified industry inspection program for bulk milk tankers. The proposed rule also modernizes terminology used in the rule and aligns Grade "A" bulk milk weigher and sampler inspection requirements with the PMO. It simplifies regulations regarding cleaning and sanitizing milk tankers, clarifies procedures for retaining bulk milk tanker cleaning tags, and removes an unnecessary requirement for reporting broken seals on tankers.

DATCP held public hearings on January 15, 2014, January 16, 2014 and January 17, 2014 in Eau Claire, Madison, and Green Bay. Following the hearings, the hearing record remained open until

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January 31, 2014. Seven people attended the hearings and three written comments were received. The department made a majority of the minor formatting changes recommended by the Legislative Clearinghouse in its report to the agency.

DATCP revised the rule to clarify the difference between a grade A permit issued for a bulk milk tanker and a grade A permit issued for a bulk milk weigher and sampler and revised provisions in ATCP 82.04 related to licensing and issuing grade A permits for bulk milk weighers and samplers to further clarify these requirements. The rule analysis was also updated to provide further explanation of the department's statutory authority for issuing a grade A permit for bulk milk weighers and samplers, and the department's authority for implementing a certified industry inspection program, in response to questions from the Legislative Clearinghouse.

The Department also incorporated technical corrections suggested during the public hearing process and made the following additional changes:

- Shortened the length of time by which the department must issue a bulk milk tanker license to an applicant from 40 days to 30 days and the length of time by which the department shall grant or deny a bulk milk weigher and sampler license to an applicant from 60 to 40 days;
- Allowed milk which is over 50 ° Fahrenheit to be collected if, within 4 hours after collection, the milk is being processed exclusively into milk or dairy products not designated as a grade A dairy product under s. ATCP 80.01(14) and (15); and
- Included milk silos in the definition of "bulk tank", to allow partial collection of milk from milk silos as well as bulk tanks, and address the concern expressed during the hearing that several large farms are considering using upright milk silos for on farm storage.

Motion:

Mike Dummer made a motion, seconded by Miranda Leis, to approve the final draft rule of ATCP 82. Motion approved unanimously.

Food Safety Modernization Act Update (FSMA) Report

Steve Ingham, Division Administrator for the Division of Food Safety, provided an update on the seven rules proposed by the US Food and Drug Administration (FDA) to implement the Food Safety Modernization Act (FSMA). The comment period for four of the rules dealing with Preventative Controls for Human Food, Produce Safety, Foreign Supplier Verification and Accreditation of 3rd-Party Auditor and Certification Bodies has closed. Two of the remaining rules relating to Preventative Controls for Food for Animals and Food Defense will close for comment on March 31st with the last rule relating to Sanitary Transportation closing for comment on May 31st.

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Mr. Ingham highlighted key requirements of the remaining proposed rules, the major objections that commenters have raised, and the impact of the Farm Bill on these proposed rules.

ATCP 161.62 Dairy Processor Grants (Hearing Draft)

Mike Bandli, supervisor of the agricultural business development area within the Division of Agricultural Development, presented the hearing draft of ATCP 161.62 and the "Grow Wisconsin Dairy Processor Grant Program."

The "dairy processor" grant program is designed to promote the growth of the dairy industry by providing grants to dairy processors. The biennial budget act appropriated \$200,000 in grant funding for each year of the FY 2013-15 fiscal biennium. This proposed rule spells out grant procedures and criteria. Under this proposed rule, the "dairy processor" grant program will support projects proposed by dairy processors intended to expand and diversify the dairy industry.

Motion:

Dennis Badtke made a motion, seconded by Mike Dummer, to approve the hearing draft rule of ATCP 161.62. Motion approved unanimously.

Wisconsin Agricultural Statistics Services (WASS) Report

Greg Bussler, State Statistician, updated the Board on the following:

- Production Report
 - o In December, 2.31 billion pounds of milk were produced in Wisconsin.
 - o Milk production in 23 major states totaled 15.7 billion pounds.
 - As of February 1st, Wisconsin had 10,498 milk cow herds, down 621 herds since February 2013.
- Price Report:
 - o December price of \$22.00 per hundredweight of milk.
 - o Preliminary January price of \$23.00 per hundredweight of milk.
 - o Preliminary January price of corn sold for \$4.10 per bushel.
 - o Preliminary January soybean price sold for \$12.70 per bushel.
 - Preliminary January price for alfalfa hay sold for \$200 per ton, down \$40 per ton since last January.
- January Livestock Survey Results
 - o Cattle Survey Results
 - There are 3.35 million cattle head in Wisconsin as of January 1st.
 - Beef cows number 240,000 head in Wisconsin.
 - Milk cows number 1.27 million head.
 - Total for all cattle and calves reached 87.7 million head, 2% lower than 2013.

- This is the lowest January cattle inventory since 1951.
- Sheep and Milk Goats Survey
 - Milk Goats numbered at 46,000 head.
 - Sheep and lamb counts in Wisconsin totaled 83,000 head.
 - 2013 lamb crop down 2% from 2012.
- Crop Value Summary Released
 - Value of production of Wisconsin field and miscellaneous crops was 3.8 billion dollars in 2013.
 - Value of corn production was 1.88 billion dollars.
 - o Fall potato production value of 311 million dollars.
 - o Soybeans production value at 724 million dollars.
- Preliminary Census of Agriculture data released today
 - o Includes number of farms, land and farms, market value of agriculture products sold, and demographic data.
 - o Complete census data will be released later in the spring.
- NASS reinstating the following programs, previously cancelled due to sequestration:
 - July Cattle Survey
 - Potato Stock Survey
 - o Non-citrus Fruit and Vegetable Forecasts and Estimates
 - o Mink Report
- 2013 County Estimates for Corn and Soybeans released tomorrow
 - o Data used in calculating payments farmers receive from crop insurance.
- NASS conducting data collection for the Farm and Ranch Irrigation Survey, the Census of Aquaculture, the Agricultural Resource Management Survey, and the March Intention Survey.

Livestock Siting Report

Richard Castelnuevo, Program & Policy Chief of the Division of Agricultural Resource Management, presented the agency's four year evaluation report of the Livestock Facility Siting Law, ch. ATCP 51, Wis. Admin Code which includes an update on the local implementation of the law and describes the requirements for conducting a four year review.

Under s. 93.90 (2) (c), Stats, DATCP must review the livestock facility siting standards in ch. ATCP 51 at least once every four years, and as part of its review, appoint a committee of experts to provide advice. This is the second four year review conducted by DATCP since the adoption of the siting rule in 2006.

Board Member Reports

Mark Schleitwiler- After the release of the Mercy for Animals video on December 10th, Belgioioso has been meeting with farm groups and milk suppliers to ensure the humane

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treatment of animals. Mark attended the first industry advisory committee meeting on January 17th for the Babcock Hall renovation. Mark congratulated the officers on their positions.

Nicole Hansen- January has been full of meetings and a two day education event for cranberry growers, which was well attended. In February, the Cranberry Marketing Committee decided on a producer allotment and a marketing order for the 2014 crop to help control supply. In March, Nicole will be attending a bee study through the UW. Nicole congratulated the new officers and wished them luck.

Miranda Leis- Organic Valley continues with its rebuild with 70 employees moving back into the central section next week and 50 more employees scheduled to move in May. Miranda and her husband Corey attended several sessions at the American Farm Bureau Federation's (AFBF) meeting in San Antonio and enjoyed the 75 degree weather there. At home, things are busy with basketball and archery while also trying to keep everything running on the farm with the cold weather.

Dean Strauss- Dean welcomed Doug to the board and congratulated the new officers. Winter came fast and hard which made corn drying and manure management a challenge. Dean is looking forward to being able to hopefully plant in 6 to 8 weeks in warmer weather. Corn prices are low but the demand for milk is high driving up the current prices. Dean is cautiously optimistic that the demand will continue.

Dennis Badtke- Dennis congratulated the officers on their new positions and welcomed Doug to the board. In the agricultural credit area, credit quality and land market look good. Real estate prices are going up at a decreasing rate. Irrigation area research shows a good amount of land being converted from CRP and MFL going to cropland. Preliminary numbers seem to show a slight drop in the sale of real estate the beginning of this year compared to the last several years.

Doug Wolf- Doug comes to the board from a 1,200 acre family farming operation in Lancaster, Wi focusing on pork production and a cow-calf business. Doug also sits on the Board of Directors for U.S. Farmers and Ranchers Alliance (ASFRA), which is a group of 80 farm organizations working to increase trust between farmers and ranchers. The pork industry is very concerned with the porcine epidemic diarrhea virus possibly spreading and was pleased to see DATCP's Dr. McGraw halting swine weigh in's at fairs. Doug is privileged and honored to be selected to serve on the board as he has heard of its reputation for good work. He congratulated the new officers and is looking forward to working with them in the future.

Andy Diercks- Andy welcomes Doug to the board. Andy has been busy with meetings lately some of which have been dealing with sustainability and high capped wells. He will have several more meetings coming up in Minneapolis and Chicago. The processor contract is up in the air currently with McCain foods which could be detrimental to the industry. The Farm Bill recently passed which was good for specialty crops.

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The Secretary previously met with the EU ambassador to discuss to the *Trans-Atlantic Trade Investment Partnership* Agreement. One of the provisions related to the labeling process and the EU's wish to include geographical indicators (GI's) and County of Origin Labeling. This item causes concern for Wisconsin as Non-EU members would not be able to label their products with common cheese names like feta, mozzarella, and cheddar. The Secretary recently met with the Vice President of Trade Policy for the US Dairy Export Council and has urged it to work with other contacts in Washington to review this provision.

These past few months have been busy for the Secretary participating in many meetings and events. The first of which was the winter meeting of the National Association of State Departments of Agriculture (NASDA) Feb. 2-6 in Reston, VA. The key topic was FDA implementation of the Food Safety Modernization Act. The Secretary also spoke at the 2014 "Profitability and Progress" Focus on Goats Conference held at the UW-Platteville and gave remarks at the National Farmers Organization (NFO) Annual National Convention in Wisconsin Dells. In late January, the Secretary traveled to Palm Springs, California to participate in Dairy Forum 2014, where Jim Ostrom of Milk Source received the 2014 Innovative Dairy Farmer of the Year Award. He also attended the Outstanding Young Farmer Awards Banquet in Green Bay and was able to visit the Rice Lake Farm Show at Cedar Mall in Rice Lake.

US agriculture export numbers are up by 3% which pails in comparison to the State of Wisconsin export numbers which increased by 9%, securing our rank as the 13th state within the US. Wisconsin Dairy export numbers are up 41% compared to the national dairy export increase of 18% overall. The increase in Wisconsin's dairy exports can partially be attributed to the partnership with China, whose imports have increased by 63%. Wisconsin is now exporting to 150 countries and generating 399 million dollars in exports.

The Implements of Husbandry (IOH) proposal is currently with the legislature and has had several modifications proposed. This is a very important topic for the farming industry that will need to be addressed. At this time, the department is aware of seven counties that have purchased portable scales in anticipation of the proposal passing the legislature.

In the Allen's, Inc. bankruptcy case, the bankruptcy court recently took action to allow a purchaser to buy Allen's, Inc. and its facilities. The department now needs to determine how this will impact our Producer Securities Fund and what potential payments to producers will still need to be met.

Future Schedule and Agenda Items

The Board is scheduled to meet March 19th in Madison.

Adjournment

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By unanimous consent, the Board adjourned at approximately 3:51pm.
Andy Diercks, Board Chair
Miranda Leis, Secretary

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